

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARSHA A. HARLEY and DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT, Washington, DC

*Docket No. 01-295; Submitted on the Record;
Issued August 31, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition causally related to compensable work factors.

On August 5, 1999 appellant, then a 51-year-old program management analyst, filed a claim alleging that she sustained severe depression causally related to her federal employment. In a statement dated October 28, 1999, appellant indicated that she had filed an equal employment opportunity (EEO) complaint for discrimination. Appellant also alleged that she had not been granted sufficient advanced sick leave, that she was not allowed to telecommute and that her work environment was hostile and dysfunctional.

In a decision dated March 16, 2000, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not substantiated compensable work factors as contributing to an emotional condition. In a decision dated October 4, 2000, the Office denied modification.

The Board finds that appellant has not established an employment-related emotional condition.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.¹ To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric

¹ Pamela R. Rice, 38 ECAB 838 (1987).

disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

Appellant's primary allegation appears to be that she was subject to discrimination on grounds that included race, age, gender and reprisal. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁴ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁵

The record indicates that appellant did file an EEO complaint for discrimination, but there is no evidence that a finding of discrimination was made. Moreover, appellant did not submit other probative and reliable evidence that is sufficient to establish a claim based on discrimination in this case.

In her statements appellant has also alleged error in administrative actions, such as in advancement of sick leave. Although the handling of leave requests and attendance matters are generally related to employment, they are administrative functions of the employer, not duties of the employee.⁶ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁷

² See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁵ *Helen P. Allen*, 47 ECAB 141 (1995).

⁶ *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

⁷ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

In this case, appellant has not submitted probative evidence of error or abuse in an administrative matter. In a January 10, 2000 statement, an employing establishment supervisor indicated that the decision to limit the amount of advanced sick leave was based on appellant's employment history and her ability to repay her advance of leave. There is no evidence of error or abuse with respect to a specific administrative matter in this case.

The Board notes that appellant has alleged generally that she was unhappy with her work environment, which included coworkers that were vindictive and untrustworthy and her inability to get a different assignment. These allegations generally relate to appellant's frustration at not being able to work in a particular environment or hold a particular position and, as previously noted, do not come within coverage of the Act.⁸ The Board finds that appellant has not established a compensable work factor based on frustration with her work environment.

Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁹

The October 4 and March 16, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
August 31, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁸ See *Anne L. Livermore*, 46 ECAB 425 (1995).

⁹ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).